FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. 803

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,

Petitioners,

against

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL, and DEMOSTHENES LOIZIDES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK AND BRIEF IN SUPPORT THEREOF

LOUIS B. BOUDIN,
Of Counsel for Petitioners.

INDEX

PETITION: PAGE

A—Statement of the Matter Involved 2

B—The Question Presented 6

C—Reasons Relied On For the Allowance of the Writ 6

BRIEF:

POINT I—The case involves rights guaranteed under the United States Constitution 8

POINT II—The matter involved is of the highest public interest 9

POINT III—The decision sought to be reviewed is clearly in conflict with the decisions of this Court 9

CONCLUSION 10

CASES CITED

A. F. L. v. Swing, 312 U. S. 321 8

Bakery & Pastry Drivers' Union v. Wohl, 315 U. S. 769 8

Senn v. Tile Layers' Union, 301 U. S. 468 8

Thornhill v. Alabama, 310 U. S. 88 8

IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. .....

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,
Petitioners,

against

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL, and DEMOSTHENES LOIZIDES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioners, Cafeteria Employees Union, Local 302, and William Mesevich, respectfully pray that a *writ of certiorari* issue to review the order of the Court of Appeals of the State of New York, affirming an order of the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, which said last mentioned order affirmed a judgment of the Supreme Court of the State of New York, County of the Bronx, in favor of Gus Angelos and others, as plaintiffs, and against these Petitioners, as defendants, whereby Petitioners were enjoined and restrained from stationing pickets at or near a certain cafeteria or restaurant located at 838 East 180th Street, Borough of the Bronx, City of New York, State of New York.

And in support of their petition, your petitioners respectfully show to this Honorable Court:

A

Statement of the Matter Involved

I. Petitioner Cafeteria Employees Union, Local 302, is a voluntary unincorporated association, and a bona fide labor organization composed of workers in cafeterias in the Borough of Bronx, City of New York, and elsewhere in the said City; and Petitioner William Mesevich is its President.

II. For many years prior to on or about April 14, 1939, Demosthenes Loizides was the owner of a certain cafeteria located at 838 East 180th Street, in the Borough of Bronx, City and State of New York, which said cafeteria was conducted by the said Demosthenes Loizides under the firm name and style of "World Cafeteria", by which name said cafeteria was generally known.

III. Some time prior to April 14, 1939, Petitioner Cafeteria Employees Union, Local 302, requested the said Demosthenes Loizides that he enter into a collective bargaining agreement with it, and that he employ its members as workers in his said cafeteria. Said Demosthenes Loizides refused the said request to employ members of Petitioner Cafeteria Employees Union, Local 302, and refused to enter into any collective bargaining agreement with it covering or concerning the workers which he employed in his said cafeteria. Thereupon, Petitioner Cafeteria Employees Union, Local 302, caused the said cafeteria located at 838 East 180th Street, Borough of Bronx, New York City, to be picketed by one picket. Said picketing commenced on or about the 15th day of April, 1939, and continued until it was enjoined by the Supreme Court of the State of New York, as hereinafter more particularly stated. Said picketing was at all times orderly and peaceful.

IV. Thereafter and on or about May 3, 1939, the said Demosthenes Loizides and six other persons, to wit, Gus Angelos, John Harris, Lucas Harris, Nick Fellougis, Harry Galatis, and Mary Waal, claiming to be copartners and owners of the said cafeteria located at 838 East 180th Street, Borough of the Bronx, City of New York, brought a suit in the Supreme Court of the State of New York, in and for the County of Bronx, against your Petitioners, entitled "Gus Angelos, John Harris, Lucas Harris, Nick Fellougis, Harry Galatis, Mary Waal and Demosthenes Loizides, copartners trading under the name of The World Cafeteria, plaintiffs, against William Mesevich, President of the Cafeteria Employees Union, Local 302, an unincorporated association having more than seven members, individually and as President of said union, defendants", wherein they prayed the said Supreme Court to enjoin and restrain your Petitioners from continuing the said picketing. The said suit came to trial in the said Supreme Court, and was tried therein on the 14th day of June, 1939, and resulted in a judgment or decree which was entered in the said court on or about September 20, 1939, in favor of the plaintiffs therein and against your Petitioners, enjoining and restraining your Petitioners from continuing the said picketing or thereafter conducting any picketing whatsoever at or near the said cafeteria located at 838 East 180th Street, Borough of Bronx, City of New York. The material portion of the said decree was and is in the following language, to wit:

> "ORDERED, ADJUDGED AND DECREED, that the plaintiffs have judgment against the defendants for a permanent injunction restraining them, and the defendants hereby are restrained and enjoined from stationing pickets at or near the plaintiffs' place of business at 838 East 180th Street, Borough of the Bronx, City of New York, and from interfering with the plaintiffs' customers who may seek to enter their place of business, or to prevent by coercion or otherwise any customers of the plaintiffs seeking to enter plaintiffs' place of business, and from interfering in any other wise with the plaintiffs' business."

V. Thereupon, you Petitioners duly appealed from the said judgment or decree to the Appellate Division of the Supreme Court of the State of New York, in and for the First Department. The said appeal was thereafter duly argued in the said Appellate Division; and after such argument the said Appellate Division affirmed the said judgment or decree by a divided court, three members of the said court voting for affirmance and two members of the said court voting for reversal. The order of affirmance of the Appellate Division was entered on or about the 10th day of April, 1942. No opinion was written by the majority of the said court upon such affirmance.

VI. Thereupon your Petitioners duly appealed from the said order of affirmance to the Court of Appeals of the State of New York, which said court is the court of last resort of the State of New York. The said last mentioned appeal came to be heard before the said Court of Appeals and was duly argued herein; and after hearing said argument, the said Court of Appeals made its decision affirming the said judgment or decree by a divided court, four members of the said court voting for affirmance, while three members of the said court voted for reversal. The order of affirmance of the Court of Appeals of the State of New York was entered in the said Court on the 21st day of January, 1943.

VII. During the trial of the said suit in the Supreme Court of the State of New York, and in the argument of the said appeals, your Petitioners asserted rights under the Constitution of the United States, and the said judgment and orders hereinbefore referred to were adverse to those rights, in violation of your Petitioners' rights under the Constitution of the United States.

In their notice of appeal from the order of the Appellate Division of the Supreme Court of the State of New York, in and for the First Department, to the Court of Appeals of the State of New York, your Petitioners specifically asserted their rights under the Constitution of the United

States, and stated specifically as a ground for the said appeal that the judgment or decree of the Supreme Court of the State of New York, and the order of the Appellate Division affirming the same, were in violation of your Petitioners' rights under the Constitution of the United States, and particularly the provisions of Amendments I, V and XIV thereof. The said notice of appeal contained the following statement, to wit:

> "PLEASE TAKE FURTHER NOTICE that the appeal is taken upon the following ground, among others:
> That said judgment and order are violative of Constitution of the United States, particularly Amendments I, V and XIV thereof, and the Constitution of the State of New York, particularly Article I, Section 8, thereof."

VIII. The Court of Appeals of the State of New York considered the rights asserted by your Petitioners under the Constitution of the United States; and the determination and decision of the said Court of Appeals was adverse to the rights of your Petitioners under the Constitution of the United States. The fact that the said Court considered the rights asserted by your Petitioners under the Constitution of the United States appears, among other things, from the following language used by the majority of the said Court in their opinion, to wit:

> "It has been found by the lower courts that the picketing of the World Cafeteria was at all times orderly and peaceful and that no acts of violence had been threatened or committed by the defendant union. The defendants had the constitutional right to accurately and truthfully and without violence, force or coercion, or conduct otherwise unlawful or oppressive, make their grievances known to the public."

IX. That the said decision and determination was and is contrary to the rights asserted by your Petitioners under the Constitution of the United States appears from the order of the said court, which, as already stated, affirmed the judgment of the Supreme Court of the State of New York, which was in derogation of the said asserted rights.

B

The Question Presented

The sole question presented is:

Is the decree of the Supreme Court of the State of New York, affirmed by the Court of Appeals of the State of New York, absolutely prohibiting the orderly and peaceful picketing by Cafeteria Employees Union, Local 302, of the cafeteria located at 838 East 180th Street, Borough of the Bronx, City of New York, in the course of a labor dispute, violative of the rights of your Petitioners under the provisions of the Constitution of the United States and the Articles of Amendment thereto as construed by this Court?

C

Reasons Relied On For the Allowance of the Writ

The question presented is one of constitutional interpretation, namely, whether under our constitutional system, and particularly the guarantees contained in the First, Fifth and Fourteenth Amendments, a State may, by a judicial decree, absolutely prohibit the imparting of information concerning a labor dispute by means of pickets who impart such information either by word of mouth or the display of written or printed signs. It is the contention of your Petitioners that such action is contrary to the Constitution of the United States and its Amendments, as construed and interpreted by this Court in numerous decisions in the recent past.

We believe that the judgment and order to be reviewed are clearly contrary to the decisions of this Court; and also that the matter involved is of great public importance in that it affects the rights of all organized labor in the State of New York to picket in an orderly and peaceful

manner in the course of labor disputes arising in that State.

Your petitioners therefore verily believe that the application presents a case cognizable under the rules of this Honorable Court, and one eminently proper for review by this Honorable Court.

WHEREFORE, your petitioners respectfully pray that a *writ of certiorari* be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of the State of New York, commanding that Court to certify and to send to this Court for its review, a full and complete transcript of the record of all proceedings in the said suit, and to stand to and abide by such order and direction as your Honorable Court shall deem meet and the circumstances of the case require, and that your petitioners may have such other and further relief or remedy in the premises as to this Honorable Court may seem just and proper.

Dated: New York, February 15, 1943.

LOUIS B. BOUDIN,
Of Counsel for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. .....

CAFETERIA EMPLOYEES UNION, LOCAL 302, and WILLIAM MESEVICH,
Petitioners,

against

GUS ANGELOS, JOHN HARRIS, LUCAS HARRIS, NICK FELLOUGIS, HARRY GALATIS, MARY WAAL, and DEMOSTHENES LOIZIDES.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

POINT I

The case involves rights guaranteed under the United States Constitution.

The case clearly involves rights guaranteed under the Constitution of the United States,—namely, the rights of free speech and free press. This has been held so often by this Court in recent years that we do not deem it necessary to labor the point.

Senn v. *Tile Layers' Union*, 301 U. S. 468, 478;
Thornhill v. *Alabama*, 310 U. S. 88;
A. F. L. v. *Swing*, 312 U. S. 321;
Bakery & Pastry Drivers' Union v. *Wohl*, 315 U. S. 769.

POINT II

The matter involved is of the highest public interest.

Needless to say, also, the matter is of the greatest public importance,—the right of organized labor to picket in an orderly and peaceful manner in the course of a labor dispute. This, too, need not be labored further, as it is apparent from the nature of the decision sought to be reviewed. It was also in a sense formally certified to by the minority of the Court of Appeals of the State of New York, consisting of Chief Judge Lehman and Associate Judges Loughran and Desmond, who concluded their vigorous dissenting opinion with the following sentences:

> "In this small lawsuit there is at hazard, just as surely as in great strifes that sweep the world, an ancient and inalienable right. If that right cannot find vindication in the courts it has little chance elsewhere."

POINT III

The decision sought to be reviewed is clearly in conflict with the decisions of this Court.

It is also clear from a mere statement of the case that the decision sought to be reviewed is contrary to the recent decisions of this Court construing the constitutional guarantees of the Federal Constitution asserted by Petitioners in this case. Again, we believe, the matter is too plain to require elaborate argument. We shall therefore limit ourselves to quoting a portion of the dissenting opinion filed by Chief Judge Lehman and two Associate Judges of the Court of Appeals of the State of New York; which sufficiently summarizes the argument presented by us in that court on the constitutional aspect of the case, and refers to some of the decisions of this Court upon which we relied in that court and rely here. In their opinion the dissenting judges of the Court of Appeals said on this branch of the case:

"Even if this injunction were not unlawful under section 876-a and under our decisions, early and late, even if there were no labor dispute and no case growing out of a labor dispute, this ban against peaceful picketing would still be violative of the Federal Bill of Rights. Most plainly is this pointed out in *Bakery Drivers* v. *Wohl* (315 U. S. 769), where the Supreme Court noted (p. 774) that the New York courts had seemed to assume that the legality of the injunction followed from a determination that a labor dispute was not involved. 'Of course,' said the Supreme Court 'that does not follow; one need not be in a "labor dispute" as defined by the State Law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive.' (See, also, *Thornhill* v. *Alabama*, 310 U. S. 88, 100; *Drivers* v. *Meadowmoor*, 312 U. S. 287, 296-298; *A. F. of L.* v. *Swing*, 312 U. S. 32.) Nothing is now better settled than that picketing is an exercise of the constitutional right of free speech, that it needs no authorization from the State, which may in proper case regulate picketing, but may never forbid it."

CONCLUSION

This case is clearly one in which the public interest requires a full review by this Court of the serious constitutional questions involved. A *writ of certiorari* should therefore be granted by this Court so that a full argument of the constitutional questions raised may be had, and judgment directed by this Court in accordance with its interpretation of the constitutional rights involved.

Dated: New York, February 15, 1943.

Respectfully submitted,

Louis B. Boudin,
Of Counsel for the Petitioners,
20 West 43rd Street,
New York City.